WP(C) 229/2007
BEFORE
THE HON'BLE MR JUSTICE B.K. SHARMA

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For the petitioners : Mr. M. A. Singh,
Mr. K. Gogoi, Advocates

For the respondents: Ms. R. Chokraborty, GA
Mr. M. Bhuyan,
Mr. P. Hazarika, Advocates

Date of hearing 09.03.2007
Date if judgment : 13.03.07

JUDGEMENT AND ORDER

1. This writ petition has been filed by 11 members of the particular Workers' Union raising the grievance against their expulsion from the union.

2. The petitioners were the members of the registered Trade Union, namely Indian Oil Workers Union, having its registered Office at Duliajan in the District of Dibrugarh. The Union has its own rules and regulations to govern its affairs.

3. A dispute had arisen into the affairs of the Union in view of the claims and counter claims made by two sets of office bearers leading to filing of the writ petition in W.P.(C) No. 5615/06 by three of its members of the Union who incidentally are also the writ petitioners in the instant writ petition.

4. The writ petition was disposed of by order dated 15.11.06 entrusting the responsibility to the Assistant Labour Commissioner, Dibrugarh for initiating and completing the process of election of a regular body of the Trade Union after giving necessary notice to all concerned in accordance with the provisions of the Constitution of India and the byelaws of the Union. A duty was cast on the Assistant Labour Commissioner, Dibrugarh to supervise and/or conduct the election by taking all steps.

5. Pursuant to the aforesaid order passed by this Court, the Assistant Labour Commissioner, Dibrugarh by his Annexure-4 letter dated 16.12.06 intimated the Secretary of the Union and the Convenor of the Ad hoc Committee of the Union that a meeting would be held on 19.12.06 to discuss on holding of election of the Union as per the order passed by this Court. The petitioners representing the Ad hoc Committee of the Union appeared before the Assistant Labour Commissioner, who thereafter issued Annexure-6 notification dated 03.01.07 intimating that the election of the Union would be held as per schedule annexed thereto.

6. By Annexure-8 series individual show cause notices dated 17.11.06 issued by the General Secretary of the Indian Oil Workers' Union (Assam), Duliajan, the petitioners were asked to show cause as to why necessary action against them should not be taken for their anti union activities. According to the petitioners, they have not engaged in any anti union activities warranting issuance of show cause notice. There is no averment in the writ petition as to whether the petitioners have responded to the show cause notices by filing any reply.

7. Aforesaid show causes notices have now culminated to impugned Annexure-9 series expulsion notices dated 02.01.07 issued to each of the writ petitioners

. By the impugned expulsion notices issued individually to the petitioners, the unanimous decision of the full-fledged Executive Meeting held on 16.12.06 to take disciplinary action against the petitioner by expelling them from the Union w.e.f. date of the notice, i.e. 02.01.07 for their entire service life has been conveyed. It is this expulsion notice dated 02.01.07 issued individually to the petitioners which has been put to challenge in this writ petition.

8. The writ petition has been filed by making the Labour Commissioner-cum-Registrar of the Trade Union, Assam; Assistant Labour Commissioner, Dibrugarh, Indian Oil Workers' Union and the President and the General Secretary of the Indian Oil Workers' Union as party respondents. The prayer made in the writ petition is as follows:

It is, therefore, humbly prayed that your Lordships would be pleased to admit this petition call for the records of the case, issue Rule calling upon the respondents to show cause/causes as to why a writ in the nature of mandamus shall not be issued directing them to set aside and quashed the impugned order dated 02.01.07 (Annexure-9 series) and after showing cause/causes hearing the parties, perusing the records your Lordships would be pleased to make the Rules absolute and pass such other order/orders as your Lordships may seem fit and proper.

AND

Pending disposal of this writ petition your Lordships would be pleased to suspend the expulsion order dated 02.01.07 vide Annexure-9 series.

9. The respondents No. 3, 4 and 5 have filed their counter affidavit contending inter alia that the writ petition is not maintainable in the set of facts and form in which the same has been presented. It has been stated that the Indian Oil Workers' Union is governed by its own Constitution and byelaws. In paragraph-12 of the counter affidavit it has been stated that the executive body of the Union took the unanimous decision for taking appropriate steps against the decedent members for their anti union activities. Pursuant to issuance of show cause notices, the Executive body of the Union took a decision to serve expulsion notices to the petitioners.

10. I have heard Mr. M. Singh, learned counsel for the petitioners and Mr. M. Bhuyan, learned counsel representing the respondents No. 3, 4 and 5. I have also heard Ms. R. Chokraborty, learned Stated counsel for the respondent No. 1. To counter the preliminary objection raised by Mr. Bhuyan that the writ petition is not maintainable against the private body, Mr. Singh, learned counsel for the petitioners has argued that since it was the duty of the Assistant Labour Commissioner to supervise the election of the Union, the Union could not have taken the impugned decision without the approval from him. He has placed reliance on the following decisions:

1) AIR 1976 SC 425 (Rohtas Industries Ltd. and another vs. Tohtas Industries Staff Union and others)
2) AIR 1989 SC 1607 (Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust and others, vs. V.R. Rudani and others)
3) (2006) 10 SCC 417 (North Eastern Railway Employees Union and others vs. IIIrd Additional District Judge, Farukhabad and others)

11. Although Mr. Singh, learned counsel for the petitioners has submitted that the writ petition is maintainable in view of the involvement of the Assistant Labour Commissioner in the process of election, however, on being pointed out that the State of Assam is not party respondent to the writ petition, he submitted that same may not be necessary having regard to the facts and circumstances involved in this case. The Apex Court in the case of Shri Ranjeet Mal vs. General Manager, Northern Railway, Baroda House, New Delhi and another as reported in (1977) 1 SCC 484, noticing that the Union of India was not made the party respondent to the writ petition, held that the Union of India was a necessary party. That was a case relating to removal of an employee by the General Manager. It

was argued that since it is the action of the General Manager which is under challenge, the Union of India is not a necessary party. Rejecting such plea, the Apex Court held that the Union of India was a necessary party to the writ petition. The decision of the High Court that Union of India was a necessary party to the writ petition, was upheld by the Apex Court.

12. In the instant case also the Assistant Labour Commissioner is the officer of the State Assam. Of his own, he is not an authority under Article 12 of the Constitution of India. However, the petitioners have chosen not to make the State of Assam as party respondent. Thus it has been rightly contended that the writ petition is bad for non-joinder of necessary party.

13. The prayer made in the writ petition has been noted above. The prayer has been made for a direction without specifying anything and as to whom such direction is to be issued. Since the expulsion notices have been issued by the General Secretary of the Union, naturally a direction will have to be issued to him. Can it be said that the General Secretary of the Union and for that matter, the Union itself is an entity under Article 12 of the Constitution of India ? It is in this context learned counsel for the respondents submitted that the writ petition in respect of private affairs of the Union, a private body is not maintainable.

14. In the decisions referred to by the learned counsel for the petitioners, the Apex Court in the fact situation involved in those cases, observed that the writ jurisdiction under Article 226 of the Constitution of India is wide enough so as to affect any person, even a private individual. In the case of North Eastern Railway Employees Union (supra), it was observed that under the provisions of the Trade Unions Act, 1926, it is the Registrar which is the authority vested with the duty of administering the provisions of the Act. It was in this context, the order issued by the High Court designating the General Manager, NER as the authority to hold the elections of NER employees' Union was held erroneous.

15. In the decision making process of the General Secretary of the Union and for that matter the Union, no governmental authorities or any authority under Article 12 of the Constitution of India is involved. The expulsion of the petitioners from the membership of the union is purely a private affair of the union. Merely because a duty was entrusted to the Assistant Labour Commissioner to initiate holding of smooth election and to form a regular body of the Union, same by itself will not clothe the petitioners to challenge the legality and validity of the decision of the Union. The earlier writ petition was filed challenging the action of the Assistant Labour Commissioner, Dibrugarh. Unlike the said writ petition, in the instant writ petition, no order of Assistant Labour Commissioner is under challenge.

16. In the case of Binny Ltd. and another vs. V. Sadasivan and others reported in (2005) 6 SCC 657, the Apex Court discussing the maintainability of the writ petition against private parties held that to maintain a writ petition, such private authorities must be discharging a public function and the decision sought to be corrected or enforced must be in discharge of a public function. In the instant case, nothing has been pleaded and/or shown that the Union is discharging any public function. This Court in the decision reported in 2004 (1) GLT 228 (Rambha Bala Devi vs. Multipurpose Progressive Association) and 2006 (1) GLT 86 (Saleha Begum vs. State of Assam and others), noticing that there was no lis between the petitioner and any governmental authority and that there was no control of the Govt. over the management of the school, held that the writ petitions were not maintainable.

17. In the case of General Manager, Kisan Sahakari Chini Mil Ltd. vs. Shatrughan Nishad reported in (2003) 8 SCC 639, about which a mention has been made above, the Apex Court noticing the various earlier judgments held the writ petition to be not maintainable. That was a case relating to termination of service of

the workmen of the Mil in question, a cooperative society. It was argued that ev en if the Mil is not an authority within the meaning of Article 12 of the Consti tution, writ application can be entertained as mandamus can be issued under Arti cle 226 of the Constitution against any person or authority which would include a private person of body. After noticing that the dispute did not involve any pu blic function, the Apex Court held that the jurisdiction of the High Court under Article 226 of the Constitution could not have been invoked. In the said case, the Apex Court summarized the expression other authorities after expressing a note of caution that it must be realized that it would not be stretched so far t o bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A note of caution was expressed that wide enlargem ent of the meaning must be tampered by wise limitation.

18. In the case of Supriyo Basu & Ors. vs. WB Housing Board & Ors. reported in (2005) 6 SCC 289 the Apex Court noticing that the society in question being n ot a department of the State and also not being a creature of a statute, but mer ely governed by a statute, upheld the decision of the High Court by which it was held that the writ petition was not maintainable as no statutory action had be en assailed. It was noted by the High Court that the dispute involved in that p roceeding essentially related to claims in the realm of private bodies. Same is the case in hand.

19. In view of the above, I am of the considered opinion that the petitioner s cannot make any grievance against their expulsion from the Union by the Gen eral Secretary upon the decision taken in the executive committee meeting of the Union. It will be open for the petitioners to pursue such other remedy as may b e available for them under the law.

20. The writ petition stands dismissed. There shall be no order as to costs.